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10 Attorneys for Plaintiffs,  
11 ARISTA RECORDS LLC; UMG  
12 RECORDINGS, INC.; SONY BMG  
13 MUSIC ENTERTAINMENT; and  
14 INTERSCOPE RECORDS

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17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 ARISTA RECORDS LLC, a Delaware limited  
21 liability company; UMG RECORDINGS, INC.,  
22 a Delaware corporation; SONY BMG MUSIC  
23 ENTERTAINMENT, a Delaware general  
24 partnership; and INTERSCOPE RECORDS, a  
25 California general partnership,

26 Plaintiffs,

27 v.

28 DARRYL HORVAT,

Defendant.

CASE NO. 3:08-01041-SC

**FIRST AMENDED COMPLAINT FOR  
COPYRIGHT INFRINGEMENT**

## **JURISDICTION AND VENUE**

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. §101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. §1331 (federal question); and 28 U.S.C. §1338(a) (copyright).

3. This Court has personal jurisdiction over the Defendant, Darryl Horvat, and venue in this District is proper under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400, because, on information and belief, the Defendant resides in this District and/or a substantial part of the acts of infringement complained of herein occurred in this District.

## PARTIES

4. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

5. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

6. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

7. Plaintiff Interscope Records is a California general partnership, with its principal place of business in the State of California.

8. Plaintiffs are informed and believe that Defendant is an individual who resided in Santa Cruz, California, within this District at the time of the infringement complained of herein. Upon information and belief, Defendant may still be found in this District.

**COUNT I**

# **INFRINGEMENT OF COPYRIGHTS**

9. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

10. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright law with respect to certain copyrighted sound

1 recordings, including but not limited to, all of the copyrighted sound recordings on Exhibit A to this  
2 Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted  
3 Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright  
4 Registration issued by the Register of Copyrights, for which the Plaintiffs are the owners as specified  
5 on Exhibit A.

6       11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the  
7 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted  
8 Recordings to the public.

9       12. Much of the unlawful distribution of copyrighted sound recordings over the Internet  
10 occurs via "peer-to-peer" ("P2P") file copying networks or so-called online media distribution  
11 systems. P2P networks, at least in their most popular form, refer to computer systems or processes  
12 that enable Internet users to search for files (including audio recordings) stored on other users'  
13 computers and transfer exact copies of files from one computer to another via the Internet, which can  
14 include both downloading an exact copy of that file onto the user's own computer and distributing an  
15 exact copy of that file to other Internet users on the same P2P network. P2P networks enable users  
16 who otherwise would have no connection with, or knowledge of, each other to provide a  
17 sophisticated search mechanism by which users can locate these files for downloading and to  
18 reproduce and distribute files off of their personal computers.

19       13. Users of P2P networks who distribute files over a network can be identified by using  
20 Internet Protocol ("IP") addresses because the unique IP address of the computer offering the files  
21 for distribution can be captured by another user during a search or a file transfer. Users of P2P  
22 networks can be identified by their IP addresses because each computer or network device (such as a  
23 router) that connects to a P2P network must have a unique IP address within the Internet to deliver  
24 files from one computer or network device to another. Two computers cannot effectively function if  
25 they are connected to the Internet with the same IP address at the same time.

26       14. Plaintiffs identified an individual using LimeWire on the P2P network GnutellaUS at  
27 IP address 169.233.32.220 on November 1, 2007 at 04:48:35 EDT distributing 103 audio files over  
28 the Internet. The Defendant was identified as the individual responsible for that IP address at that

date and time. Plaintiffs are informed and believe that as of November 1, 2007, Defendant, without the permission or consent of Plaintiffs, had continuously used, and continued to use, a P2P network to download and/or distribute to the public the Copyrighted Recordings. Exhibit A identifies the date and time of capture and a list of Copyrighted Recordings that Defendant has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public. Through Defendant's continuous and ongoing acts of downloading and/or distributing to the public the Copyrighted Recordings, which acts Plaintiffs believe to have been ongoing for some time, Defendant has violated Plaintiffs' exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and exclusive rights under copyright.

15. In addition to the sound recordings listed on Exhibit A, Plaintiffs are informed and believe that Defendant has, without the permission or consent of Plaintiffs, continuously downloaded and/or distributed to the public additional sound recordings owned by or exclusively licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of infringement are ongoing.

16. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on each respective album cover of each of the sound recordings identified in Exhibit A. These notices of copyright appeared on published copies of each of the sound recordings identified in Exhibit A. These published copies were widely available, and each of the published copies of the sound recordings identified in Exhibit A was accessible by Defendant.

17. Plaintiffs are informed and believe that the foregoing acts of infringement have been willful and intentional, in disregard of and indifference to the rights of Plaintiffs.

18. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

19. The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502

1 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing  
 2 Plaintiffs' copyrights, and ordering Defendant to destroy all copies of sound recordings made in  
 3 violation of Plaintiffs' exclusive rights.

4 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

5 1. For an injunction providing:

6 "Defendant shall be and hereby is enjoined from directly or indirectly  
 7 infringing Plaintiffs' rights under federal or state law in the  
 8 Copyrighted Recordings and any sound recording, whether now in  
 9 existence or later created, that is owned or controlled by Plaintiffs (or  
 10 any parent, subsidiary, or affiliate record label of Plaintiffs)  
 11 ("Plaintiffs' Recordings"), including without limitation by using the  
 12 Internet or any online media distribution system to reproduce (i.e.,  
 13 download) any of Plaintiffs' Recordings, to distribute (i.e., upload) any  
 14 of Plaintiffs' Recordings, or to make any of Plaintiffs' Recordings  
 15 available for distribution to the public, except pursuant to a lawful  
 16 license or with the express authority of Plaintiffs. Defendant also shall  
 17 destroy all copies of Plaintiffs' Recordings that Defendant has  
 18 downloaded onto any computer hard drive or server without Plaintiffs'  
 19 authorization and shall destroy all copies of those downloaded  
 20 recordings transferred onto any physical medium or device in  
 21 Defendant's possession, custody, or control."

22 2. For statutory damages for each infringement of each Copyrighted Recording  
 23 pursuant to 17 U.S.C. § 504.

24 3. For Plaintiffs' costs in this action.

25 4. For Plaintiffs' reasonable attorneys' fees incurred herein.

26 5. For such other and further relief as the Court may deem just and proper.

27 Dated: May 27, 2008 HOLME ROBERTS & OWEN LLP

28 By: 

MATTHEW FRANKLIN JAKSA  
 Attorney for Plaintiffs  
 ARISTA RECORDS LLC; UMG  
 RECORDINGS, INC.; SONY BMG  
 MUSIC ENTERTAINMENT; and  
 INTERSCOPE RECORDS

# **EXHIBIT A**

**EXHIBIT A****DARRYL HORVAT****IP Address:** 169.233.32.220 2007-11-01 04:48:35 EDT**CASE ID#** 146631328**P2P Network:** GnutellaUS**Total Audio Files:** 103

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
UMG Recordings, Inc.	Hoobastank	The Reason	The Reason	339-555
Arista Records LLC	Dido	White Flag	Life for Rent	340-392
SONY BMG MUSIC ENTERTAINMENT	Oasis	Wonderwall	(What's The Story) Morning Glory	289-141
SONY BMG MUSIC ENTERTAINMENT	Michael Jackson	Thriller	Thriller	41-965
UMG Recordings, Inc.	Kanye West	Late	Late Registration	372-867
UMG Recordings, Inc.	Gwen Stefani	Hollaback Girl	Love.Angel.Musi c.Baby.	364-759
Interscope Records	Eminem	Brain Damage	Just Don't Give a Fuck (single)	250-999
Interscope Records	Enrique Iglesias	Escape	Escape	303-794
Arista Records LLC	Ace of Base	The Sign	The Sign	169-749